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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 SCOTT ALLEN SPERLING,

16 Defendant.

No. CR 06-911-AHM

GOVERNMENT'S OPPOSITION TO
DEFENDANT SCOTT ALLEN SPERLING'S
MOTION TO TERMINATE SUPERVISED
RELEASE TERM

17
18 Plaintiff United States of America, by and through its counsel
19 of record, the United States Attorney for the Central District of
20 California and Assistant United States Attorney Karen I. Meyer,
21 hereby files its Opposition to Defendant Scott Allen Sperling's
22 Motion To Terminate Supervised Release Term. (CR 96).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Scott Allen Sperling ("defendant") is currently serving a ten-year term of supervised release imposed following a conviction for possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). The count of conviction requires that defendant serve a mandatory minimum five-year term of supervised release. 18 U.S.C. § 3583(k). Defendant, who has so far served approximately 73 months of the 120-month term of supervised release that was imposed, has filed this motion to terminate supervised release because he contends he has been compliant and believes that he is at low risk of recidivism. Because defendant has not made a sufficient showing that his behavior while on supervised release has been extraordinary, defendant's motion should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Offense Conduct

On August 25, 2006, ICE agents executed a search warrant at defendant's residence and seized a computer and numerous CDs from a home office adjacent to defendant's bedroom. (PSR ¶ 9.) A forensic examination of defendant's hard drive and CDs revealed that they contained approximately 85 video clips and 964 still images of child pornography. (PSR ¶ 10.) The National Center for Missing and Exploited Children determined that over 100 images and 12 videos from the recovered hard drive and CDs depicted identified minor victims of sexual abuse. (PSR ¶ 11.) Among the images were various pictures of prepubescent girls being sexually penetrated vaginally and anally by adult males. (PSR ¶ 12.) From on or about February 12, 2006, up to and including on or about August 25, 2006, defendant possessed child

1 pornography images on his computer hard drive and on numerous CDs.
2 Using his computer, defendant had downloaded the child pornography
3 images and stored them on his computer and on the CDs. (PSR ¶ 13.)

4 **B. Procedural History**

5 On January 9, 2007, defendant pleaded guilty pursuant to a
6 written plea agreement to a single-count information charging him
7 with a violation of 18 U.S.C. § 2252A(a)(5)(B), possession of child
8 pornography. (PSR §§ 1-3.) On August 1, 2007, defendant was
9 sentenced to 39 months imprisonment followed by ten years of
10 supervised release. (Supervision Report at 1.) On August 19, 2015,
11 defendant filed this motion for early termination of supervised
12 release. (CR 96.)

13 **III. ARGUMENT**

14 **A. Defendant Has Not Demonstrated Extraordinary Circumstances** 15 **Justifying Early Termination**

16 Title 18, United States Code, Section 3583(e), provides that a
17 court may, after considering the 3553(a) factors, terminate
18 supervised release early "if it is satisfied that such action is
19 warranted by the conduct of the defendant released and the interest
20 of justice" 18 U.S.C. § 3583(e)(1). Defendant bears the
21 burden of showing that he is entitled to early termination. See
22 United States v. Weber, 451 F.3d 552, 559 n.9 (9th Cir. 2006) (citing
23 cases). However, compliance with supervised release conditions does
24 not warrant early termination. See United States v. Flint, 2014 WL
25 3966299 at *2 (E.D. Cal. Aug. 13, 2014) (good behavior does not
26 warrant early termination of supervised release); United States v.
27 Bauer, 2012 WL 1259251 at *2 (N.D. Cal. Apr. 13, 2012) ("compliance
28 with release conditions, resumption of employment and engagement of

1 family life - are expected milestones rather than a change of
2 circumstances rendering continued supervision no longer
3 appropriate"); United States v. Sine, 2012 WL 1901298 at *2 (E.D.
4 Cal. May 24, 2012 ("[M]odel prison conduct and full compliance with
5 the terms of supervised release is what is expected of . . .[those]
6 serving terms of supervised release and does not warrant early
7 termination.") (internal quotation marks and citation omitted).

8 Defendant has not carried his burden of demonstrating that early
9 termination is warranted here. Defendant has completed only six
10 years of his ten-year supervised release term. To support early
11 termination, defendant relies on his contention that he has arguably
12 been compliant with the terms of his supervised release to date and
13 that he allegedly is at low risk of recidivism. (Mot. at 3.) Even
14 if true, these are not extraordinary circumstances justifying early
15 termination.

16 Defendant's claim that he has received "no infractions or
17 violations of supervision and ha[s] complied with every condition
18 thereof" (mot. at 3), is inaccurate. In January 2013, defendant
19 tested positive for alcohol, which was a violation of his conditions
20 of supervision. (Supervision Report at 2, 3.) Twice in 2014,
21 defendant viewed and/or possessed adult pornography. While defendant
22 did not have a special condition prohibiting him from viewing
23 sexually explicit material, this conduct did violate his treatment
24 contract with his sex offender treatment provider. As a consequence,
25 computer monitoring software was installed on defendant's computer.
26 (Supervision Report at 3.) Even after this installation, in December
27 2014, defendant again viewed adult pornography. (Id.)

1 Further, defendant's risk of recidivism was adjusted from
2 low/moderate to high based on the nature of his conviction. (Id.)
3 The probation officer noted that recidivism decreases with increased
4 periods of time on supervision. (Supervision Report at 4; see also
5 Supervision Report at 3 ("it may be [defendant's] placement on
6 supervision and participation in treatment that reduces his risk").)
7 Thus, continuing defendant's period of supervision is appropriate
8 because supervised release provides benefits to defendants such as
9 Mr. Sperling. As the Supreme Court has stated:

10 Congress intended supervised release to assist individuals
11 in their transition to community life. Supervised release
12 fulfills rehabilitative ends, distinct from those served by
13 incarceration. See 18 U.S.C. § 3553(a)(2)(D); United
14 States Sentencing Commission, Guidelines Manual
15 §§ 5D1.3(c), (d), (e) (Nov. 1998); see also S. Rep. No. 98-
16 225, p. 124 (1983) [U.S. Code Cong. & Admin. News 1984, pp.
17 3182, 3307] (declaring that "the primary goal [of
18 supervised release] is to ease the defendant's transition
19 into the community after the service of a long prison term
20 for a particularly serious offense, or to provide
21 rehabilitation to a defendant who has spent a fairly short
22 period in prison for punishment or other purposes but still
23 needs supervision and training programs after release").

24 United States v. Johnson, 529 U.S. 53, 59 (2000). The probation
25 officer has expressed concern that defendant could reoffend without
26 being detected, and attributes defendant's progress to his time on
27 supervision. (Supervision Report at 3.) There is no question that
28 probation, along with defendant's treatment provider, have taken

1 steps to keep defendant on a path to recovery that will allow him to
2 successfully re-integrate into society. Thus, there is no reason to
3 terminate defendant early when it is clear defendant is benefitting
4 from supervision, especially when the principal reason defendant
5 offers in support of early termination is defendant doing only what
6 is expected of him - complying with the terms of supervision. In
7 light of both defendant's offense conduct and conduct while on
8 supervision, continued supervision is warranted in order to protect
9 the public and deter defendant from re-offending.

10 **IV. CONCLUSION**

11 For the foregoing reasons, the Court should deny defendant's
12 motion for termination of supervised release.

CERTIFICATE OF SERVICE

I, **R. Moran**, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

GOVERNMENT'S OPPOSITION TO DEFENDANT SCOTT ALLEN SPERLING'S MOTION TO TERMINATE SUPERVISED RELEASE TERM

☐ Placed in a closed envelope for collection and inter-office delivery, addressed as follows:

☒ Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows:

**SCOTT ALLEN SPERLING
9966 Sunfish Circle
Paso Robles, CA 93446**

☐ By hand delivery, addressed as follows:

☐ By facsimile, as follows:

☐ By messenger, as follows:

☐ By Federal Express, as follows:

This Certificate is executed on **October 5, 2015**, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.

s/R. Moran

R. Moran
Legal Assistant